

JOHANNES SOYLAND

IBLA 81-110

Decided February 3, 1981

Appeal from the decision of the Montana State Office, Bureau of Land Management, declaring mining claims, M MC 46857-46865, abandoned and void.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim

Under 43 U.S.C. § 1744 (1976) and 43 CFR 3833.2-1 the owner of an unpatented mining claim located on Federal lands on or before Oct. 21, 1976, must file with BLM evidence of annual assessment work or a notice of intention to hold the mining claim on or before Oct. 22, 1979, or on or before Dec. 30 of each calendar year following the year of recording with BLM, whichever is sooner. The requirement is mandatory and failure to comply conclusively constitutes abandonment of the claim by the owner.

2. Mining Claims: Abandonment--Mining Claims: Assessment Work

The filing of evidence of annual assessment work in the county clerk's office is not compliance with the recordation requirements of 43 CFR 3833.2-1.

APPEARANCES: Johannes Soyland, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Johannes Soyland has appealed the decision of the Montana State Office, Bureau of Land Management (BLM), dated September 29, 1980, declaring nine mining claims, M MC 46857-46865, abandoned and void for failure to file evidence of annual assessment work or a notice of intention to hold the claims on or before October 22, 1979. 1/

In his statement of reasons, appellant asserts that evidence of annual assessment work on his claims for 1979 and 1980 was filed with the Beaverhead County, Montana, clerk and argues that, under the mining law of 1872, a claim which lapses for lack of assessment work can be reactivated by filing assessment work for the current year.

[1, 2] Section 314(a) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744(a) (1976), requires the owner of an unpatented mining claim located prior to October 21, 1976, to file evidence of assessment work for the claim with BLM within the 3-year period following the date and prior to December 31 of each year thereafter. The corresponding Departmental regulation 43 CFR 3833.2-1(a) reads:

(a) The owner of an unpatented mining claim located on Federal lands on or before October 21, 1976, shall file in the proper BLM office on or before October 22, 1979, or on or before December 30 of each calendar year following the calendar year of such recording, whichever date is sooner, evidence of annual assessment work performed during the preceding assessment year or a notice of intention to hold the mining claim.

Failure to so file is considered conclusively to constitute abandonment of a claim under section 314(c) of FLPMA, 43 U.S.C. § 1744(c) (1976), and 43 CFR 3833.4.

1/ The claims subject to the BLM decision are:

<u>Claim No.</u>	<u>Serial No.</u>	<u>Location Date</u>
Dum #1	M MC 46857	1-08-74
Zip #1	M MC 46858	1-06-74
Zip #2	M MC 46859	1-06-74
Zip #3	M MC 46860	1-06-74
Zip #4	M MC 46861	1-06-74
Windy #1	M MC 46862	8-22-71
Windy #2	M MC 46863	8-22-71
Windy #3	M MC 46864	8-22-71
Windy #4	M MC 46865	8-22-71

Notices of location for the claims were filed with BLM on October 17, 1979.

The purpose of section 314(a) of FLPMA, supra, requiring recordation of assessment work with the proper BLM office is to ensure that BLM has a record of continuing activity on a claim so that the Federal Government will know which mining claims are being maintained on Federal lands and which have been abandoned. See Topaz Beryllium Co. v. United States, 479 F. Supp. 309, 311-12 (D. Utah 1979). 2/ The responsibility for complying with the recordation requirements rests with appellant. Filing in the county clerk's office does not meet these requirements. This Board has no authority to excuse lack of compliance. Glen J. McCrorey, 46 IBLA 355 (1980).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Douglas E. Henriques

Administrative Judge

We concur:

Anne Poindexter Lewis
Administrative Judge

Edward W. Stuebing
Administrative Judge

2/ Appeal pending.

